



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT-OST-2022-0109]

RIN 2105-AF10

Enhancing Transparency of Airline Ancillary Service Fees

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Public hearing. Reopen comment period.

SUMMARY: This Notice announces a virtual public hearing on certain issues related to the U.S.

Department of Transportation's Notice of Proposed Rulemaking on Enhancing Transparency of Airline Ancillary Service Fees. By this Notice, the virtual public hearing on this rulemaking, originally scheduled for March 16, 2023, is rescheduled to March 30, 2023. Through this notice, the Department also reopens the comment period for the rulemaking and will accept comments through April 6, 2023.

DATES: The virtual hearing will be held on March 30, 2023, from 9 a.m. to 5 p.m. Eastern Time. The hearing is open to the public, subject to any technical and/or capacity limitations. Requests to attend the hearing must be submitted to

https://usdot.zoomgov.com/webinar/register/WN_MSHu2poARNCKM8vI4-q5mQ. We encourage interested parties to register by Monday, March 27, 2023. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the hearing. Requests for additional accommodations because of a disability must be received at ryan.patanaphan@dot.gov by Monday, March 27, 2023.

ADDRESSES: The virtual hearing will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department's Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/latest-news> in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual hearing, please use the link: https://usdot.zoomgov.com/webinar/register/WN_MSHu2poARNCKM8vI4-q5mQ. Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Ryan Patanaphan, Senior Trial Attorney, by email at ryan.patanaphan@dot.gov or by phone at (202) 366-9180.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 2022, the U.S. Department of Transportation (DOT or Department) published in the *Federal Register* a notice of proposed rulemaking (NPRM) that proposed several disclosure requirements to enhance the transparency of ancillary service fees so consumers know the true cost of air travel early in the purchasing process. (87 FR 63718). In the NPRM, the Department proposed to require U.S. air carriers, foreign air carriers, and ticket agents to clearly disclose passenger-specific or itinerary-specific baggage fees, change fees, and cancellation fees to consumers whenever fare and schedule information is provided to consumers for flights to, within, and from the United States. The Department also proposed requiring similar disclosures for fees for a child 13 or under to be seated adjacent to an accompanying adult, as well as the transactability of such seating fees. To ensure ticket agents could provide the proposed disclosures, the NPRM proposed requiring carriers to provide useable, current, and accurate information regarding fees to ticket agents that sell or display the carrier's fare and schedule information. The NPRM also proposed an implementation and compliance period of six months from the date of a potential final rule.

The NPRM provided for a comment period of 60 days after publication of the NPRM in the *Federal Register*, i.e., December 19, 2022. In response to a request for additional opportunity to comment, the Department extended the comment period for an additional 35 days to January 23, 2023.¹ The Department subsequently received a request to further extend the comment period on the basis that the requestor was not able to view the January 12, 2023, meeting of the Aviation Consumer Protection

¹ 87 FR 77765 (Dec. 20, 2022).

Advisory Committee meeting when it occurred and that as of the time the request for extension was submitted, the meeting materials had not been posted to the docket. The Department declined to extend the comment period based on that request. (88 FR 4923 (Jan. 26, 2023)). The Department received another request for additional time to provide comments on the NPRM, based primarily on technological and interface issues identified by the petitioner. The Department posted a notice stating that it was considering whether to grant that request and would publish its determination in the *Federal Register* (See <https://www.transportation.gov/airconsumer/AncillaryFeeNPRM-Procedural-Information-January23-2023>.) As discussed in Section V. of this notice, the Department has determined to grant the Travelers United request for additional time to submit comments.

On January 23, 2023, multiple commenters petitioned the Department for a public hearing on the NPRM pursuant to the Department's regulation on rulemakings relating to unfair and deceptive practices, 14 CFR 399.75.² Airlines for America raised two questions in its petition: whether consumers are or are likely to be substantially injured or are misled by airlines' current disclosures of ancillary service fees; and whether disclosures of itinerary-specific ancillary fees at the time of first search will result in the display of incomplete or inapplicable ancillary fee information, cause consumer confusion, and distort the marketplace. The Travel Technology Association (Travel Tech) states in its petition that there is a fundamental disputed factual issue as to whether the proposed display requirements would benefit or harm consumers. Travel Tech also believes that the proposed disclosures are technically infeasible and has requested a hearing to discuss these concerns as well as the Department's proposed time frame for compliance. In its comment on the NPRM, Google LLC also requested a hearing based on its assertion that the Department's analysis was flawed and that it was deficient in providing its complaint-based evidence justifying the rulemaking. In arguing that a hearing is in the public interest pursuant to 14 CFR 399.75, Airlines for America and Travel Tech assert that the underlying proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other

² See, e.g., petitions for hearing from Airlines for America, <https://www.regulations.gov/comment/DOT-OST-2022-0109-0091>, the Travel Technology Association, <https://www.regulations.gov/comment/DOT-OST-2022-0109-0239>, and Google LLC, <https://www.regulations.gov/comment/DOT-OST-2022-0109-0088>.

factual issues that are genuinely in dispute; the ordinary public comment process is unlikely to provide an adequate examination of the issue to permit a fully informed judgement; the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; the requested hearing on the issue would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by the Department's regulation; and a hearing will not unreasonably delay completion of this rulemaking.

By a notice dated March 3, 2023, the Department granted the requests for a public hearing and originally scheduled the hearing for March 16, 2023.³ The Department noted that the scope of the hearing would be limited to the factual issues specified in the March 3 notice. On March 6, 2023, Airlines for America (A4A) and the Travel Technology Association (Travel Tech) requested that the public hearing be rescheduled and for additional explanation of the hearing procedures. Both organizations requested that the hearing be postponed for one month until April 17, 2023, stating that the fifteen days' notice (or ten business days, per A4A's request) provided for the hearing was insufficient to identify speakers and to compile data responsive to the subjects presented in the March 3 notice. A4A also stated that it would have difficulty finding participants due to the hearing being scheduled during the Spring Break season. Both organizations also noted that a public hearing on the Airline Ticket Refunds and Consumer Protections NPRM had been scheduled for March 14,⁴ giving them inadequate time to prepare for the March 16 hearing on the NPRM on ancillary fees.

A4A also reiterated its request for a neutral hearing officer to preside over the hearing, expressing its disagreement with the appointment of Blane Workie, the Department's Assistant General Counsel for the Office of Aviation Consumer Protection and the Department's designated Aviation Consumer Advocate. On March 8, 2023, the International Air Transport Association (IATA) wrote to express support for A4A and Travel Tech's requests.

II. Rescheduling of Public Hearing

³ 88 FR 13389.

⁴ 88 FR 13387.

After careful consideration of the points raised by A4A and Travel Tech, the Department has decided to reschedule its public hearing on the Enhancing Transparency of Airline Ancillary Service Fees NPRM to March 30, 2023. While the Department was surprised to learn that the parties that had requested the public hearing were unprepared to present views on the topics for which they had requested the hearing, the Department wants to ensure that stakeholders, including the petitioners, have an adequate opportunity to be heard on this rulemaking and for this reason, has determined that a 14-day extension to assist with preparation for the hearing is reasonable. As part of this rescheduling, the length of the hearing will also be extended to ensure adequate time is afforded to those who wish to comment. The hearing will be held from 9 a.m. to 5 p.m. ET. As noted in Section IV of this notice, if all participants have expressed their views prior to the scheduled 5 p.m. end time, the Department may end the hearing prior to 5 p.m.

III. Agenda, Hearing Officer, and Post-Hearing Actions

The Department has considered A4A's request for the appointment of a different hearing officer and has decided to retain the appointment of Blane Workie as the designated Hearing Officer. The Department notes that the Hearing Officer's role is to preside over the hearing. In that regard, Ms. Workie's appointment is appropriate because: (1) she is a career civil servant who will execute this role in a neutral, fair, and professional manner; (2) her responsibilities as an Aviation Consumer Advocate are those that she has had as an Assistant General Counsel of the Office of the Aviation Consumer Protection and such responsibilities do not make her biased; and (3) the Hearing Officer's role is to conduct the meeting using generally accepted meeting management techniques and to not serve as a decisionmaker. As stated in the Department's regulations in 14 CFR 399.75, the General Counsel considers the record of the hearing and makes a reasoned determination whether to terminate the rulemaking, proceed with the rulemaking as proposed, or modify the proposed rule.

The regulations further require the General Counsel to explain, in an appropriate rulemaking document published in the *Federal Register*, the rationale for the post-hearing decision made by the General Counsel. The rationale for the post-hearing decision made by the General Counsel will be

explained in any final rule or other appropriate rulemaking document issued by the Department for this action.

IV. Public Participation and Procedures

The March 30, 2023, hearing will begin at 9 a.m. ET, and the Department will provide time for opening remarks by the Hearing Officer. The meeting will then transition to public comments and presentations. Any oral comments presented should be limited to the subjects described in the March 3 Notice and be brief so that all participants will have an opportunity to speak. If a meeting participant wishes to speak on a particular topic identified in the March 3, 2023 notice,⁵ the participant must register in advance to speak on that topic. We ask individuals requesting to speak to specify the length of time that they would like to have allotted to them. Based on the number of participants who register to speak on a particular topic, the Department will allot time to individual speakers in a way that maximizes each speaker's ability to present their views and to ensure a wide variety of perspectives. The Hearing Officer may ask clarifying questions during the hearing but will otherwise reserve speaking time after opening remarks for meeting participants. The intent of the hearing is to ensure that the Department is able to hear from petitioners and other interested parties regarding the issues raised in the petition. If the volume of requests for oral comments received and any additional comments, responses, and/or presentations that participants may wish to make is such that all participants have expressed their views prior to the scheduled 5 p.m. end time, the Department may end the hearing prior to 5 p.m.

Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Monday, March 27 via the meeting's registration link and specify in the registration those topics on which they wish to provide comments. All written materials (e.g., PowerPoint presentations) presented at the hearing will be made part of the meeting's record.

As discussed in Section V. of this notice, and consistent with the requirement of 14 CFR 399.75, the Department plans to reopen the comment period for this rulemaking. The comment period will

⁵ 88 FR 13389, available at <https://www.federalregister.gov/documents/2023/03/03/2023-04510/enhancing-transparency-of-airline-ancillary-service-fees>

remain open through April 6, 2023. Interested parties who wish to file statements or comments that are specifically related to the subject(s) discussed at the hearing may submit their written comments electronically to the NPRM Docket (DOT-OST-2022-0109).

After the hearing and after the record of the hearing is closed, the hearing officer will place on the rulemaking docket minutes of the hearing reflecting the evidence and arguments presented on the issues.

V. Reopening of Public Comment Period

Consistent with the procedural requirement under section 14 CFR 399.75, which provides that interested parties shall be given an opportunity to file statements or comments after a hearing on the proposed regulation, and in granting the Travelers United request for additional time to submit comments, the Department is reopening the comment period for the NPRM from **[INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]** through April 6, 2023. The Department will consider any comments received from publication of the NPRM through April 6, 2023 to be timely filed. New comments submitted to the Docket may include, but need not be limited to, subjects discussed in the petition for hearing and during the March 30, 2023 hearing.

VI. Viewing Documents

Documents associated with the NPRM on Enhancing Transparency of Airline Ancillary Service Fees may be accessed in the rulemaking Docket (DOT-OST-2022-0109). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to “Open Docket Folder” and choose the document to review.

Signed in Washington, D.C., on this 9th day of March 2023.

John E. Putnam,
General Counsel,
U.S. Department of Transportation.
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